

No. 12528

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United States  
Court of Appeals  
for the Ninth Circuit.

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THE GRUEN WATCH COMPANY,  
Appellant.

vs.

ARTISTS ALLIANCE, INC.; LESTER COWAN  
PRODUCTIONS, LESTER COWAN, Indi-  
vidually; LESTER COWAN, Doing Business  
as Lester Cowan Productions, and BULOVA  
WATCH COMPANY, INC.,  
Appellee.

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Transcript of Record

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Appeal from the United States District Court,  
Southern District of California,  
Central Division.

FILED

JUL 10 1950

PAUL P. O'BRIEN, /



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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## NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

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FREDERIC H. STURDY

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Cincinnati 2, Ohio

For Appellees Artists Alliance, Inc., et al:

MITCHELL, SILBERBERG & KNUPP

603 Roosevelt Bldg.  
Los Angeles 14, Calif.

For Appellee Bulova Watch Company, Inc.:

LOW & STONE

301 Jewelers Exchange Bldg.  
747 S. Hill St.  
Los Angeles 14, Calif.

In the District Court of the United States for the  
Southern District of California, Central Division

Civil Action No. 9919-Y

THE GRUEN WATCH COMPANY, an  
Ohio Corporation,

Plaintiff,

vs.

ARTISTS ALLIANCE, INC., a California Corporation, LESTER COWAN PRODUCTIONS, LESTER COWAN, Individually, LESTER COWAN, dba Lester Cowan Productions, BULOVA WATCH COMPANY, INC., a New York Corporation Doing Business in California, DOE I, DOE II, DOE III, DOE IV, DOE V and DOE VI,

Defendants.

SECOND AMENDED AND SUPPLEMENTAL  
COMPLAINT FOR INJUNCTION, DAMAGES AND EXEMPLARY DAMAGES

Comes now the plaintiff, The Gruen Watch Company, an Ohio corporation, and for grounds of complaint against the defendants herein, and each of them, complains and alleges as follows: [2\*]

I.

Plaintiff is and at all times herein mentioned was a corporation incorporated and existing under the laws of the State of Ohio; defendant Artists Alli-

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\* Page numbering appearing at bottom of page of original Reporter's Transcript.



ance, Inc., is and at all times herein mentioned was a corporation incorporated and existing under the laws of the State of California; defendant Lester Cowan is and at all times herein mentioned was a citizen of the State of California and is and at all times herein mentioned was doing business in the State of California under the name "Lester Cowan Productions"; the true character or capacity of the defendant Lester Cowan Productions is unknown, but this plaintiff is informed and believes and therefore alleges that said Lester Cowan Productions is and at all times herein mentioned was organized and existing under the laws of the State of California, and doing business in the State of California; defendant Bulova Watch Company, Inc., is and at all times herein mentioned was a corporation incorporated and existing under the laws of the State of New York and is and at all times herein mentioned has been present and doing business in the State of California. Defendants Doe I, Doe II, Doe III, Doe IV, Doe V and Doe VI are designated by fictitious names because their true names and capacities are unknown to plaintiff; plaintiff is informed and believes and therefore alleges that they are and each of them is a citizen of a State other than Ohio and plaintiff will ask leave of Court to substitute the true names and capacities of such defendants by amendment as soon as such true names are discovered. Defendants Lester Cowan, Artists Alliance, Inc., Lester Cowan Productions, Doe I, Doe II, Doe III and Doe IV and each of them will for convenience hereinafter sometimes be referred to as "de-

defendants Cowan." Defendants Bulova Watch Company, Inc., Doe V and Doe VI and each of them will for convenience hereinafter sometimes be referred to as "defendants Bulova." The matter in controversy exceeds, exclusive of interests and costs, the sum of Three Thousand Dollars (\$3,000.00) [3]

## II.

On and for some time prior to May 24, 1948, Walter E. Kline was an agent of plaintiff, acting on behalf of plaintiff, at Los Angeles, California. On or about said date, the defendants Cowan advised the said Kline of the said defendants' plans and intentions to make a feature length motion picture in which the Marx Brothers would be co-starred, and further advised the said Kline that certain scenes and sequences in the motion picture would be devoted to the activities of one or more of the said Marx Brothers in connection with various advertising displays. On or about the same date said defendants Cowan requested the said Kline to obtain from any noncompeting advertisers represented by him, agreements in connection with the said defendants' use of signs and displays advertising the products of said noncompeting advertisers. Plaintiff was then among the advertisers represented by the said Kline, but the defendants Bulova were not. Plaintiff is informed and believes and therefore alleges that at said time the script of said motion picture did not contain a clock sequence or stunt but that the said Kline prior to the signing of the memorandum of agreement, hereinafter referred to

in Paragraph IV, conceived the clock sequence or stunt which was ultimately used by defendants Cowan, and also suggested the idea of a clock of his client Gruen being used in connection therewith.

### III.

Thereafter at said special instance and request of said defendants Cowan, the said Kline obtained from plaintiff an agreement for defendants Cowan to use in said motion picture a sign and display advertising plaintiff's products, upon the condition and understanding that the shots of plaintiff's said special sign and display would be used and displayed in said motion picture. Said Kline thereupon advised defendants Cowan of his receipt from plaintiff of said agreement, and said defendants thereupon agreed with plaintiff that in consideration of plaintiff's authority and permission to use plaintiff's [4] said contemplated special sign and display in said motion picture and in consideration of plaintiff's constructing and paying the cost of said sign and display, said defendants would use said sign and display in said motion picture.

### IV.

Concurrently with the agreement referred to in Paragraph III, and in recognition of the fact that due to circumstances beyond the control of defendants Cowan it might be necessary to cut the scene containing plaintiff's display from said picture, it was understood and agreed between plaintiff and the defendants Cowan that in such event defendants

Cowan would bear the cost of said sign and display. At the same time it was understood and agreed between plaintiff and the defendants Cowan that defendants Cowan would bear the cost of said sign and display if said motion picture was not released to the general public prior to January 1, 1950.

#### V.

Thereafter and between about June 22, 1948, and about July 3, 1948, plaintiff and defendants Cowan executed memorandum of agreement dated June 22, 1948, which said memorandum was intended to and did embody directly and by reference, the said prior oral agreements of the parties. The "agreement" referred to in Paragraph 2 of said memorandum dated June 22, 1948, was and is the agreement set out in Paragraph III hereof. That portion of paragraph 4 of said memorandum which provided that defendants Cowan would pay plaintiff for the sign or display in the event said sign or display was "not actually included in the picture," was intended to and did express the parties' additional concurrent understanding and agreement set out in Paragraph IV hereof. A copy of said memorandum of agreement dated June 22, 1948, is attached hereto, marked Exhibit "A" and is hereby referred to and made a part hereof as though here set forth at length.

#### VI.

The Marx Brothers, known as Chico, Harpo and Groucho, are comedians of international renown, and the feature length motion picture "Love

Happy" starring them was and is expected to be and in the normal course of events will be seen by many millions of people in the United States and throughout the world, and the rights of the plaintiff acquired under the aforesaid agreements were and are unique and of great value. The Gruen line of watches manufactured by plaintiff is one of the leading brands of watches in the United States and throughout the world, and plaintiff spends annually in advertising its products hundreds of thousands of dollars, and defendants Cowan, by virtue of said agreements, acquired valuable rights from plaintiff, to wit, the right to use plaintiff's sign and display, including its nationally advertised name and products, in the said motion picture.

## VII.

In compliance with the provisions of the hereinabove mentioned agreements, plaintiff, at its own cost, caused to be constructed and delivered to defendants Cowan a specially designed advertising sign and display consisting of a large sign bearing a neon illuminated clock, swinging pendulum, and the words "Gruen Watch Time." In addition to the actual cost of construction, plaintiff expended a substantial amount of time, thought and effort in the conception and design of said special sign and display, and said special sign and display was actually conceived by, was the original idea of the plaintiff, and was and is the property of the plaintiff. Said plaintiff's special sign and display was, pursuant to said agreements, used by defendants

Cowan in the County of Los Angeles, State of California, in the production of said motion [6] picture starring the Marx Brothers, which picture originally was entitled "Hearts and Diamonds" but which thereafter was and now is entitled "Love Happy." The filming of that portion of said motion picture, which included plaintiff's said sign and display, was completed on or about the end of August, 1948, and the said sign and display of plaintiff, having fully served the purposes of said agreements and of defendants Cowan, was thereupon returned by defendants Cowan to plaintiff's possession in Los Angeles, and said sign and display has been in its possession at all times since. At no time did plaintiff authorize defendants Cowan to use or utilize plaintiff's said special sign and display except for the purpose of advertising plaintiff's products through the medium of said motion picture; nor did plaintiff ever authorize defendants Cowan to permit any competitor of plaintiff to use or utilize or obtain any benefit from the use of plaintiff's said special sign and display.

#### VIII.

After the defendants Cowan had used plaintiff's said special sign and display in the production of said motion picture, the said defendants Cowan encouraged and permitted Life Magazine, a nationwide weekly publication, and one Slim Aarons, a professional photographer employed by said Life Magazine, to take photographs of said sign and display and provided Aarons and Life Magazine with

other photographs of said sign and display which were actually taken from the motion picture film. Concurrently therewith defendants Cowan advised plaintiff of their plan and desire to obtain publicity for their said motion picture from Life Magazine and plaintiff, acting solely upon the understanding and belief that said defendants had finally determined that plaintiff's display was satisfactory and was in and would remain in said motion picture, authorized and permitted the said defendants to release said photographs for publication. Defendants Cowan thereupon, and with full knowledge of plaintiff's said understanding and belief, released all of said photographs for publication, all for the sole purpose of publicizing and promoting said defendants' motion picture "Love Happy." [7]

#### IX.

Thereafter and under the date of September 10, 1948, defendants Cowan wrote plaintiff a letter and enclosed therewith the photographs referred to therein. A full, true and correct photostatic copy of said letter is attached hereto, marked Exhibit "B," and is hereby referred to and made a part hereof as though here set forth at length.

#### X.

Thereafter and under date of October 4, 1948, defendants Cowan wrote plaintiff an additional letter and enclosed therewith the additional photographs referred to therein. A full, true and correct photostatic copy of said letter is attached hereto,

marked Exhibit "C," and is hereby referred to and made a part hereof as though here set forth at length. In reliance upon the prior agreements, representations and actions of defendants Cowan, plaintiff released said photographs for publication in jewelers' trade papers and said photographs were actually published therein, and likewise in reliance upon said agreements, representations and actions of defendants Cowan, plaintiff advised its dealers throughout the United States that Gruen would be advertised in said defendants' motion picture. Said release to the jewelers' trade papers and said advice to plaintiff's dealers throughout the United States gave valuable publicity to the said defendants and their motion picture. Plaintiff would not have made said releases to jewelers' trade papers nor given said advice to its dealers except for its understanding and belief theretofore induced by the agreements, representations and actions of defendants Cowan that its special advertising sign and display was and would be in the said motion picture.

## XI.

Thereafter, and with the knowledge and permission of defendants Cowan, Life Magazine published in its issue dated February 7, 1949, a four-page article including (9) photographs or shots [8] stated as being from "The Marx Brothers forthcoming motion picture 'Love Happy.'" Said article likewise made certain other statements and representations to the general public, all as is more particularly set forth in said article and in the captions



of the said photographs. A copy of the table of contents page, and of said news article and the photographs therein contained, is attached hereto, marked Exhibit "D," and is hereby referred to and made a part hereof as though here set forth at length. Plaintiff is informed and believes and therefore alleges that prior to said publication, the defendants Cowan knew or had good reason to know that they would not use the name Gruen in their said motion picture, but they failed to advise either Life Magazine or the plaintiff of said fact.

## XII.

By their acts of authorizing and permitting the release of the said Life Magazine article and the two said photographs which depicted the Gruen name and display, defendants Cowan represented to the public and to plaintiff that said Gruen name and display would be in said forthcoming motion picture, which said defendants Cowan had previously represented to plaintiff (by their letter dated October 4, 1948) would have its world premiere on February 12, 1949, only five days after said Life Magazine publication on February 7, 1949, and by their said acts the said defendants represented to the public and to plaintiff that the photographs reproduced in said Life Magazine article constituted a portion of the final version of the motion picture "Love Happy" and that said photographs would be contained in said motion picture when it was released to the general public.

## XIII.

After completion of said motion picture, and after said release of said Life Magazine article and photographs under date of February 7, 1949, and after plaintiff had released said publicity for the said motion picture to jewelers' trade papers and to plaintiff's dealers, defendants Cowan demanded that plaintiff pay them the sum of [9] at least Twenty-Five Thousand Dollars (\$25,000.00) cash, allegedly to be used by said defendants for the purpose of jointly advertising said defendants' motion picture and plaintiff's products in national advertising, and defendants Cowan advised plaintiff that unless plaintiff complied with said demand said defendants Cowan would not only remove from the motion picture any and all shots of the display provided by plaintiff but in addition would substitute in their place shots advertising the product of one of plaintiff's major competitors in the watch industry. Said removal and substitution were threatened, and thereafter carried out, by defendants Cowan arbitrarily, wilfully, maliciously, in bad faith and for the purpose of exacting an additional financial contribution from plaintiff over and above that called for by the agreements of the parties, and for the purpose of injuring the business and good will of plaintiff. Plaintiff refused to comply with said demand. Plaintiff is informed and believes and therefore alleges that while defendants Cowan were making said threats and demands upon plaintiff, they and defendants Bulova were already, but without the knowledge

of plaintiff, negotiating to substitute Bulova's name in said motion picture in place of plaintiff's name.

#### XIV

Plaintiff is informed and believes and therefore alleges that prior to the commencement of the negotiations referred to in Paragraph XIII hereof, defendants Bulova were aware of the obligations of defendants Cowan to plaintiff and of the facts set forth in Paragraphs II, III, IV, V, VI, VII, VIII and XI hereof, but defendants Bulova nevertheless induced defendants Cowan to disregard their obligations to plaintiff and to enter into and carry out a contract with defendants Bulova, whereby, for a monetary consideration (the precise amount of which is unknown to plaintiff), paid by defendants Bulova to defendants Cowan, the said defendants Cowan would delete the name Gruen from the motion picture "Love Happy" and would [10] substitute in said motion picture the name Bulova in place of the name Gruen. That said acts of defendants Bulova were all committed with the purpose and intent thereby to deprive plaintiff of the expected fruits of its agreements and understandings with defendants Cowan and to interfere unfairly and improperly with and to injure plaintiff and plaintiff's business, dealer relationships, competitive position, reputation and good will.

#### XV.

Thereafter, under date of April 20, 1949, defendants Cowan notified plaintiff that they had elimi-

nated and would not use in the motion picture "Love Happy" any reference to plaintiff. Plaintiff has at all times refused to acquiesce in said notification and at all times has insisted that defendants Cowan must retain plaintiff's name and special sign and display in said motion picture and must remove the name Bulova from plaintiff's said special sign and display. Plaintiff notified defendants Bulova of its said position as soon as it learned of the negotiations between defendants Cowan and defendants Bulova, and said notification took place prior to the ultimate world premiere referred to in Paragraph XVII hereof.

#### XVI.

Despite the lack of authority of defendants Cowan, of which lack of authority defendants Bulova were fully aware, and in wilful and malicious derogation of plaintiff's rights in the premises, the defendants herein and each of them have conspired to commit and actively aided and abetted each other in the commission of the following acts:

(1) The defendants altered the motion picture containing plaintiff's said specially constructed sign and display in a material respect, to wit, by removing the name "Gruen" therefrom; and

(2) They actually included plaintiff's said special sign [11] and display in the motion picture as released to the general public but inserted the name "Bulova" in plaintiff's said sign and display in place of and in lieu of the name "Gruen."

Said two acts just referred to, in so far as defendants Bulova are concerned, were committed with the purpose and intent thereby to deprive plaintiff of the reasonably expected fruits of its agreements and understandings with defendants Cowan and to interfere unfairly and improperly with and to injure plaintiff and plaintiff's business, dealer relationships, competitive position, reputation and good will.

## XVII

Subsequent to the filing of the original complaint herein, said motion picture "Love Happy" had what was advertised as its world premiere showing. The special advertising sign and display, which was conceived, constructed and paid for by plaintiff, has been used and "actually included" in the final version of said motion picture, but the name "Gruen" has been erased from said film by the defendants and in place thereof, the name "Bulova" has been inserted. Plaintiff is informed and believes and therefore alleges that despite the threats of defendants Cowan, to which reference is made in Paragraph XIII hereof, the said defendants Cowan would not have erased the name "Gruen" from said motion picture save and except for the fact that they were induced so to do by defendants Bulova. Plaintiff is informed and believes and therefore alleges that said motion picture now is being released and shown by defendants Cowan at motion picture theatres throughout the United States, that unless restrained and enjoined from so doing, said defend-

ants will continue to release and show said motion picture, including plaintiff's said display which has been mutilated and distorted as aforesaid; and, further, that defendants and each of them also are carrying out a nationwide program jointly advertising said motion [12] picture and Bulova products; and that unless restrained and enjoined from so doing, the defendants and each of them will continue to carry out such advertising program.

### XVIII.

As a result of the aforesaid actions and threatened actions by the defendants, great, irreparable and continuing injury and damage is being inflicted and will continue to be inflicted upon plaintiff and plaintiff's business, dealer relationships, competitive position, reputation and good will: (1) through the loss of unique and valuable advertising which plaintiff reasonably expected to receive, was entitled to receive and would have received if defendants Bulova had not induced defendants Cowan to breach their obligations to plaintiff (2) through the ridicule to which plaintiff has been and will continue to be subjected by the jewelry trade and the public if defendants are permitted to continue to show said motion picture containing plaintiff's special sign and display but with Bulova's name inserted therein as hereinabove alleged or are permitted to continue to advertise jointly said picture and Bulova's products as hereinabove alleged; and (3) through defendants' mutilation, distortion and use of plaintiff's said specially

designed and conceived sign and display to the advantage and profit of the defendants and each of them without plaintiff's consent and in derogation of plaintiff's rights. Unless restrained and enjoined by this Court, the defendants and each of them will continue to commit said damaging acts.

### XIX.

Plaintiff has no plain, adequate or speedy remedy at law in connection with the foregoing. [13]

### XX.

As a direct and proximate result of the actions of the defendants and each of them as foresaid, plaintiff has lost and is losing world-wide advertising of very unique and substantial value, and has lost and is losing the value of the unique stunt and special sign and display conceived by plaintiff, and plaintiff and plaintiff's business, competitive position, dealer relationships, reputation and good will have likewise heretofore been and are being substantially damaged. Said damages are of such character as to be difficult of ascertainment and computation, but plaintiff estimates that it has already been damaged in an amount in excess of One Hundred Thousand Dollars (\$100,000.00).

### XXI.

All of the aforesaid actions of defendants and of each of them were wilful, malicious and oppressive and by virtue of such wilfulness, malice and oppression plaintiff is entitled to recover damages for

the sake of example and by the way of punishing the defendants and each of them in the additional sum of One Hundred Thousand Dollars (\$100,000.00).

Wherefore, plaintiff prays:

(1) That defendants, Lester Cowan, Artists Alliance, Inc., Lester Cowan Productions, Doe I, Doe II, Doe III, and Doe IV and the agents and servants of each of them be ordered to delete the name "Bulova" from said motion picture and to restore the name "Gruen" therein, and that they be enjoined permanently from again removing said name "Gruen" therefrom.

(2) That defendants, Lester Cowan, Artists Alliance, Inc., Lester Cowan Productions, Doe I, Doe II, Doe III, and Doe IV and the agents and servants of each of them be enjoined permanently from including in said motion picture "Love Happy" any shots of any display advertising in any way the products of defendant Bulova [14] Watch Company, Inc., or of any other competitor of plaintiff.

(3) That defendants, Bulova Watch Company, Inc., Doe V and Doe VI and the agents and servants of each of them be enjoined permanently from advertising their products jointly with the motion picture "Love Happy" and from using plaintiff's said display in said picture or at all.

(4) That plaintiff recover of and from the defendants and from each of them the sum of One



Hundred Thousand Dollars (\$100,000.00), general damages, and such additional sums as may have accrued to the date of the injunction hereinabove prayed for.

(5) That plaintiff recover of and from the defendants and from each of them the additional sum of One Hundred Thousand Dollars (\$100,000.00), as exemplary or punitive damages.

(6) That defendants pay to plaintiff the costs of this action, and

(7) That plaintiff have such other, different and further relief as may be just.

TAFT, STETTINIUS &  
HOLLISTER.

GIBSON, DUNN & CRUTCHER,  
HENRY F. PRINCE,  
FREDERIC H. STURDY,  
RICHARD E. DAVIS,

By /s/ FREDERIC H. STURDY,

Attorneys for Plaintiff. [15]

## EXHIBIT "A"

Webster 6156

Established 1918

Walter E. Kline

Public Relations

8445 Melrose Avenue

Hollywood 46, California

June 22, 1948

Lester Cowan Productions

General Service Studios

1049 North Las Palmas

Hollywood, California

Gentlemen:

In confirmation of our present understanding it is hereby agreed as follows:

1. You have advised me of your plans and intentions to produce a feature length sound and talking motion picture presently entitled "Hearts and Diamonds," in which the Marx Brothers will be co-starred. You have further advised me that certain scenes and sequences in the picture will be devoted to the activities of one or more of the Marx Brothers in connection with various advertisings and displays.

2. Pursuant to your request therefor I have obtained from the hereinafter specified advertisers agreements in connection with your use of their respective signs and displays. Such advertisers and their signs and displays are as follows:

a. The General Petroleum Corporation whose advertising sign displays the "Flying Red Horse"

in connection with its sale of Mobilgas.

b. The Fisk Tire Company whose advertising sign displays a boy and a candle bearing the slogan "Time to Retire."

c. The Brown and Williamson Tobacco Corporation (Kool Cigarettes), Ted Bates Agency. [16]

d. The Gruen Watch Company.

e. One or more other companies using advertising signs or displays which may hereafter be included in the terms of this agreement by our mutual written statement to that effect.

3. You understand that some expense will be incurred by me or my principals in preparing for your use the above specified advertisements or displays. On behalf of my respective principals I am privileged to state that the cost of constructing such signs and displays which will be borne by my respective principals provided that their respective advertising signs and displays are included in the final version of your picture as released to the general public; and further provided that such picture is actually released to the general public not later than January 1, 1950.

4. It is therefor understood and agreed that you will bear the cost incurred in connection with the construction and erection of any or all of such signs or displays which are not actually included in the picture substantially in the manner presently represented to you; it being further understood that you will bear the cost of all of such signs and displays if the said picture is not released to the gen-

eral public prior to January 1, 1950. At your request, of course, we shall furnish you with an itemized statement of all costs so incurred.

If the above is in accordance with your understanding of our agreement, please indicate the same by signing in the space provided therefor below.

Very truly yours,

/s/ WALTER E. KLINE.

Approved and Accepted:

LESTER COWAN  
PRODUCTIONS,

An Artists Alliance, Incorporated, Production, Produced by Lester Cowan.

By /s/ LESTER COWAN. [17]

EXHIBIT "B"

Phone GRanite 3111

Artists Alliance, Inc.  
1040 North Las Palmas  
Hollywood 38, California

September 10, 1948

Mr. H. L. Nations  
Public Relations Director  
Gruen Watch Company  
Time Hill  
Cincinnati 6, Ohio

Dear Mr. Nations:

Enclosed please find some 4x5 photographs of the action of the Gruen Watch sign in the current Lester Cowan production, "Love Happy." The sign gets a

tremendous play in the picture and you will note that Harpo Marx swings back and forth on the pendulum of the sign in several hundred feet of film.

In connection with this tieup, if you care to do so, send me watches which can be prominently used in connection with the picture and we will photograph them on the wrists of Vera-Ellen, Marion Hutton, and Ilona Massey, the three feminine stars of the film, and the three Marx Brothers which you may have to use as you see fit.

kindest regards.

Cordially,

/s/ R. E. ARMSTRONG,

Dir. of Publicity & Adv.

REA/vm

Encl. [18]

EXHIBIT "C"

Phone GRanite 3111

Artists Alliance, Inc.  
1040 North Las Palmas  
Hollywood 38, California

October 4, 1948

Mr. H. L. Nations  
Public Relations Director  
Gruen Watch Company  
Time Hill  
Cincinnati 6, Ohio

Dear Mr. Nations:

Enclosed please find photographs of Harpo Marx

swinging on the pendulum of the Gruen Watch sign. This is as closeup a shot as we could make and still show the sign.

Fred Kline of Walter Kline's office has mentioned that he has discussed a co-operative newspaper campaign with you in conjunction with the showing of this picture. If you have any details, I would appreciate same. Our first release date on the picture will be Lincoln's birthday with a world premiere in Cincinnati, followed by dates in Detroit, Chicago and New York. In all probability we will have Vera-Ellen, Ilona Massey and possibly the Marx brothers for personal appearances with the premiere.

Would also appreciate hearing your reaction to the brochure sent you regarding the proposed special train.

Kindest regards.

Sincerely,

/s/ R. E. ARMSTRONG,

Dir. of Publicity & Adv.

REA/vm [19]

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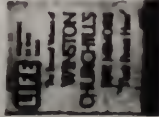
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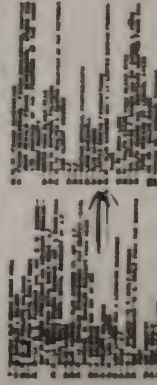
THE COVER HAS SEVERAL REFERENCES TO LIFE AND LIFE'S REPUTATION AS THE MOST INTERESTING AND MOST READ MAGAZINE IN THE WORLD. THE COVER DESIGNER HAS USED A COMBINATION OF LIFE'S HISTORY AND LIFE'S REPUTATION TO GIVE A VISUAL REPRESENTATION OF LIFE'S HISTORY.



### LIFE'S COVER

The week LIFE's cover features a title which has been a top seller since it was first published in 1911. It has been on the cover of LIFE for more than 20 consecutive years and is the full version of "The Man Who Was". The cover features a portrait of Winston Churchill, the greatest living Englishman, who is the subject of the feature story on page 24. The cover also features a portrait of the U.S. Navy's first submarine, the USS Nautilus, which was launched in 1954. The cover also features a portrait of the U.S. Navy's first submarine, the USS Nautilus, which was launched in 1954. The cover also features a portrait of the U.S. Navy's first submarine, the USS Nautilus, which was launched in 1954.

THE COVER HAS SEVERAL REFERENCES TO LIFE AND LIFE'S REPUTATION AS THE MOST INTERESTING AND MOST READ MAGAZINE IN THE WORLD. THE COVER DESIGNER HAS USED A COMBINATION OF LIFE'S HISTORY AND LIFE'S REPUTATION TO GIVE A VISUAL REPRESENTATION OF LIFE'S HISTORY.

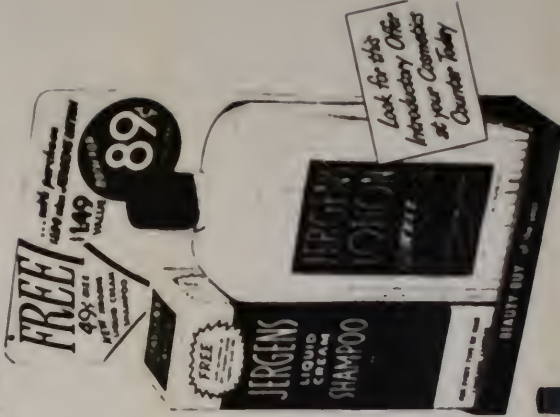


THE COVER HAS SEVERAL REFERENCES TO LIFE AND LIFE'S REPUTATION AS THE MOST INTERESTING AND MOST READ MAGAZINE IN THE WORLD. THE COVER DESIGNER HAS USED A COMBINATION OF LIFE'S HISTORY AND LIFE'S REPUTATION TO GIVE A VISUAL REPRESENTATION OF LIFE'S HISTORY.

To introduce a New, Different Shampoo!

JERGENS  
LIQUID CREAM SHAMPOO  
**FREE\***

WITH  
A \$1.00 BOTTLE  
JERGENS LOTION



*Amazing!* Jergens new Liquid Cream Shampoo combines ALL the beauty benefits of both liquid and cream shampoos! Pours like a lotion. Easy to use! Singles! Leaves hair gleaming clean, soft, easy to manage! Joins into rich creamy lather instantly—even in hard water! Contains 4 effective cleansing ingredients plus Laminol. The natural hair softener! 4 1/2 "6 1/2" bottles will give you a glorious beauty cleansing treatment!

Try it FREE\* in this big Jergens beauty offer! You get a regular dollar bottle of Jergens Lotion—the world's most loved hair softener, smooth, conditioning cream plus 4 1/2 Jergens new Liquid Cream Shampoo—both for free!

*Your Money Back*  
If you are not completely satisfied with your Jergens beauty offer, we will refund your money. No questions asked. See the full details on the back of the offer card. Offer good while supplies last. Offer ends 2/28/58. Offer good in the U.S. only. Offer good at participating retailers.

swinging on the pendulum of the Gruen Watch sign. This is as closeup a shot as we could make and still show the sign.

Fred Kline of Walter Kline's office has mentioned that he has discussed a co-operative newspaper campaign with you in conjunction with the showing of this picture. If you have any details, I would appreciate same. Our first release date on the picture will be Lincoln's birthday with a world premiere in Cincinnati, followed by dates in Detroit, Chicago and New York. In all probability we will have Vera-Ellen, Ilona Massey and possibly the Marx brothers for personal appearances with the premiere.

Would also appreciate hearing your reaction to the brochure sent you regarding the proposed special train.

Kindest regards.

Sincerely,

/s/ R. E. ARMSTRONG,

Dir. of Publicity & Adv.

REA/vm [19]



MOVIES



HIGH MOVE JIMES JOUANE  
HARRIS MILITS FISH TIRE BOY,  
MATCHES TAWN FOR YAWN

swinging on the pendulum of the Gruen Watch sign. This is as closeup a shot as we could make and still show the sign.

Fred Kline of Walter Kline's office has mentioned that he has discussed a co-operative newspaper campaign with you in conjunction with the showing of this picture. If you have any details, I would appreciate same. Our first release date on the picture will be Lincoln's birthday with a world premiere in Cincinnati, followed by dates in Detroit, Chicago and New York. In all probability we will have Vera-Ellen, Ilona Massey and possibly the Marx brothers for personal appearances with the premiere.

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Sincerely,

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Dir. of Publicity & Adv.

REA/vm [19]



**THE CHASE BEGINS** when Harpo likely drops from blonde jewel thief's bedroom window using parachute he has improvised hastily from a bed canopy.

# HAIRBREADTH HARPO

He eludes villains in neon chase

The Marx Brothers' forthcoming movie *Love Harpo* has its full quota of traditional Marx shenanigans, with Groucho as an astigmatic, primate eye, Chico a spectacularly unsuccessful mind reader and mule Harpo a chestnut-voiced hum. But best of all it has one of the finest chase scenes Harold Lloyd took up in movie-ledge Western 30 years ago. In the *Harpo*, pursued by a gang of jews of thieves, careers across the rooftops of Manhattan, dodging cops, swindlers and versions of one of the goddest manifestations of evil. The film, set in New York, is a show, may be the last display tug all three brothers around on a riddle program and punn-playing Chico trapeses around on a rope on a pretance tour, so from here on Harpoes will probably have to ride alone.



**HARPO PETERS** gambles on a building ledge high above Times Square as jewel thief's three henchmen momentarily catch up with him. He gets away.



**RIDING HIGH** after coming off the running lights of a Wheaties sign, Harpo is carried upward by Mihailza's flying horse as it blinks to sign's top. Then he leaps to another sign (below).



**SWINGING LOW**, he hunk, crawls as he clings to the oversize Green-deck pendulum (above). When dizziness sets in he let go, it catapulted through the air. For his landing, turn the page.



swinging on the pendulum of the Gruen Watch sign. This is as closeup a shot as we could make and still show the sign.

Fred Kline of Walter Kline's office has mentioned that he has discussed a co-operative newspaper campaign with you in conjunction with the showing of this picture. If you have any details, I would appreciate same. Our first release date on the picture will be Lincoln's birthday with a world premiere in Cincinnati, followed by dates in Detroit, Chicago and New York. In all probability we will have Vera-Ellen, Ilona Massey and possibly the Marx brothers for personal appearances with the premiere.

Would also appreciate hearing your reaction to the brochure sent you regarding the proposed special train.

Kindest regards.

Sincerely,

/s/ R. E. ARMSTRONG,

Dir. of Publicity & Adv.

REA/vm [19]



**FLYING TOWARD THE PENGUIN.** Loaded with smoke, he finally staggers out to the roof where the thug pounce on him again.



**HARPO ERUPTS** after being punched in the stomach by a thug who gets a face full of KOOL smoke for his trouble. Harpo downs the other thug with smoke bombs.

swinging on the pendulum of the Gruen Watch sign. This is as closeup a shot as we could make and still show the sign.

Fred Kline of Walter Kline's office has mentioned that he has discussed a co-operative newspaper campaign with you in conjunction with the showing of this picture. If you have any details, I would appreciate same. Our first release date on the picture will be Lincoln's birthday with a world premiere in Cincinnati, followed by dates in Detroit, Chicago and New York. In all probability we will have Vera-Ellen, Ilona Massey and possibly the Marx brothers for personal appearances with the premiere.

Would also appreciate hearing your reaction to the brochure sent you regarding the proposed special train.

Kindest regards.

Sincerely,

/s/ R. E. ARMSTRONG,

Dir. of Publicity & Adv.

REA/vm [19]



THE WINNER STANDS AMONG THE SKYSCRAPERS  
PROUDLY SHOOTING SMOKE FROM BOTH LIPS!

*Receipt of copy acknowledged.  
[Endorsed]: Filed Nov. 29, 1949.*

EXHIBIT "D" -- Page 5.

24





[Title of District Court and Cause.]

NOTICE OF MOTIONS TO DISMISS AND TO STRIKE FROM SECOND AMENDED AND SUPPLEMENTAL COMPLAINT AND MEMORANDUM OF POINTS AND AUTHORITIES.

To Plaintiff and to Messrs. Gibson, Dunn & Crutcher, Henry F. Prince, Frederic H. Sturdy, Richard E. Davis and Taft, Stettinius & Hollister, plaintiff's attorneys:

Please Take Notice that on the 23rd day of January, 1950, at the hour of 2:00 p.m., of said day, in the court room of the Honorable Leon R. Yankwich, United States Post Office and Court House Building, Los Angeles, California, the undersigned defendants will move the Court as follows:

I. To dismiss the second amended and supplemental complaint on file herein on the ground that it fails to state a claim upon which relief can be granted;

II. To strike from said second amended and supplemental complaint each of the following portions thereof upon the ground that each of [26] said portions is immaterial.

A. That portion of paragraph II (page 3, lines 4-14) reading as follows:

“On or about said date, the defendants Cowan advised the said Kline of the said defendants’

plans and intentions to make a feature length motion picture in which the Marx Brothers would be co-starred, and further advised the said Kline that certain scenes and sequences in the motion picture would be devoted to the activities of one or more of the said Marx Brothers in connection with various advertising displays. On or about the same date said defendants Cowan requested the said Kline to obtain from any noncompeting advertisers represented by him, agreements in connection with the said defendants' use of signs and displays advertising the products of said noncompeting advertisers."

B. That portion of paragraph II (page 3, lines 15-22) reading as follows:

"Plaintiff is informed and believes and therefore alleges that at said time the script of said motion picture did not contain a clock sequence or stunt but that the said Kline prior to the signing of the memorandum of agreement, hereinafter referred to in paragraph IV, conceived the clock sequence or stunt which was ultimately used by defendants Cowan, and also suggested the idea of a clock of his client Gruen being used in connection therewith."

C. All of paragraphs III (pages 3-4).

D. All of paragraph IV (page 4).

E. That portion of paragraph V (page 4, lines 21-28), reading as follows:

“The ‘agreement’ referred to in Paragraph 2 of said memorandum dated June 22, 1948, was and is the agreement set out in Paragraph III hereof. That portion of paragraph 4 of said [27] memorandum which provided that defendants Cowan would pay plaintiff for the sign or display in the event said sign or display was ‘not actually included in the picture,’ was intended to and did express the parties’ additional concurrent understanding and agreement set out in Paragraph IV hereof.”

F. That portion of paragraph VII (page 5, lines 22-26), reading as follows:

“In addition to the actual cost of construction, plaintiff expended a substantial amount of time, thought and effort in the conception and design of said special sign and display, and said special sign and display was actually conceived by, was the original idea of the plaintiff, \* \* \*.”

G. All of paragraph VIII (page 6).

H. All of paragraph IX (page 7).

I. That portion of paragraph X (page 7, lines 9-14), reading as follows:

“Thereafter and under date of October 4, 1948, defendants Cowan wrote plaintiff an additional letter and enclosed therewith the additional photographs referred to therein. A full, true and correct photostatic copy of said letter is attached hereto, marked Exhibit ‘C,’ and is

hereby referred to and made a part hereof as though here set forth at length.”

J. That portion of paragraph X (page 7, lines 14-28), reading as follows:

“In reliance upon the prior agreements, representations and actions of defendants Cowan, plaintiff released said photographs for publication in jewelers’ trade papers and said photographs were actually published therein, and likewise in reliance upon said agreements, representations and actions of defendants Cowan, plaintiff advised its dealers throughout the United States that Gruen would be advertised in said defendants’ motion picture. Said release to the jewelers’ trade [28] papers and said advice to plaintiff’s dealers throughout the United States gave valuable publicity to the said defendants and their motion picture. Plaintiff would not have made said releases to jewelers’ trade papers nor given said advice to its dealers except for its understanding and belief theretofore induced by the agreements, representations and actions of defendants Cowan that its special advertising sign and display was and would be in the said motion picture.”

K. All of paragraph XI (pages 7-8).

L. All of paragraph XII (page 8).

M. That portion of paragraph XIII (pages 8-9, lines 28-9), reading as follows:

“After the completion of said motion picture, and after said release of said Life Magazine article and photographs under date of February 7, 1949, and after plaintiff had released said publicity for the said motion picture to jewelers’ trade papers and to plaintiffs’ dealers, defendants Cowan demanded that plaintiff pay them the sum of at least Twenty Five Thousand Dollars (\$25,000.00), cash, allegedly to be used by said defendants for the purpose of jointly advertising said defendants’ motion picture and plaintiff’s products in national advertising, and defendants Cowan advised plaintiff that unless plaintiff complied with said demand said defendants Cowan would not only remove from the motion picture any and all shots of the display provided by plaintiff but in addition would substitute in their place shots advertising the product of one of plaintiff’s major competitors in the watch industry.”

N. That portion of paragraph XIII (page 9, lines 9-14), reading as follows:

“Said removal and substitution were threatened, and thereafter carried out, by defendants Cowan arbitrarily, wilfully, maliciously, [29] in bad faith and for the purpose of exacting an additional financial contribution from plaintiff over and above that called for by the agree-

ments of the parties, and for the purpose of injuring the business and good will of plaintiff.”

O. That portion of paragraph XIII (page 9, lines 14-19), reading as follows:

“Plaintiff refused to comply with said demand. Plaintiff is informed and believes and therefore alleges that while defendants Cowan were making said threats and demands upon plaintiff, they and defendants Bulova were already, but without the knowledge of plaintiff, negotiating to substitute Bulova’s name in said motion picture in place of plaintiff’s name.”

P. That portion of paragraph XVI (page 10, line 22), reading as follows:

“Despite the lack of authority of defendants Cowan, \* \* \*”

Q. That portion of paragraph XX (page 13, lines 5-6), reading as follows:

“\* \* \* and has lost and is losing the value of the unique stunt and special sign and display conceived by plaintiff, \* \* \*”

R. That portion of paragraph XX (page 13, lines 6-9), reading as follows:

“\* \* \* and plaintiff and plaintiff’s business, competitive position, dealer relationships, reputation and good will have likewise heretofore been and are being substantially damaged.”

S. All of paragraph XXI (page 13).

Said motions are based upon the second amended and supplemental complaint on file herein, upon this notice of motion, upon the memorandum of points and authorities attached hereto, upon the memoranda of points [30] and authorities heretofore filed in support of defendants' motions to dismiss the original complaint and the first amended and supplemental complaint and upon all the pleadings and papers on file herein.

MITCHELL, SILBERBERG &  
KNUPP and

LEONARD A. KAUFMAN,

By /s/ LEONARD A. KAUFMAN,

Attorneys for defendants, Artists Alliance, Inc.,  
Lester Cowan and Lester Cowan d/b/a Lester  
Cowan Productions.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Dec. 30, 1949. [31]

[Title of District Court and Cause.]

NOTICE OF MOTION TO DISMISS SECOND  
AMENDED AND SUPPLEMENTAL COM-  
PLAINT

To Plaintiff and to Messrs. Gibson, Dunn &  
Crutcher, Henry F. Prince, Frederick H.  
Sturdy, Richard E. Davis and Taft, Stettinius  
& Hollister, plaintiff's attorneys:

Please Take Notice that on the 23rd day of Jan-  
uary, 1950, the hour of 2:00 p.m. of said day, in the  
court room of the Honorable Leon R. Yankwich,  
United States Post office and Court House Build-  
ing, Los Angeles, California, the undersigned de-  
fendants will move the Court as follows:

I. To dismiss the second amended and supple-  
mental complaint on file herein on the ground that  
it fails to state a claim upon which relief can be  
granted; [33]

Said motion is based upon the second amended  
and supplemental complaint on file herein, upon this  
notice of motion, upon the memorandum of points  
and authorities attached hereto, upon the memoran-  
dum of points and authorities heretofore filed in  
support of defendants' motions to dismiss the origi-  
nal complaint and the first amended and supple-  
mental complaint and upon all the pleadings and  
papers on file herein, and defendant, Bulova Watch  
Company, Inc., a New York corporation, joins in  
the "Motions to Dismiss and to strike from Second



Amended and Supplemental complaint" heretofore filed by defendants, Cowan, and upon the Memorandum of Points and Authorities filed therewith.

Defendant, Bulova Watch Company, Inc., is not at this time moving for a change of venue since it believes that such a motion is premature before a cause is at issue. Defendant, Bulova, further reserves the right to file a motion for change of venue at such future time as shall be appropriate.

Dated: January 3, 1950.

LOW & STONE,

By /s/ LEONARD LOW,

Counsel for Defendant, Bulova Watch Company, Inc., a New York Corporation.

Affidavit of Service by Mail attached.

[Endorsed]: Filed Jan. 3, 1950. [34]

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[Title of District Court and Cause.]

### ORDER ON MOTIONS

The various motions heretofore argued and submitted, are now decided as follows:

1. The motion of the defendants, Artists Alliance, Inc., and Cowan to dismiss the amended Complaint is granted. Plaintiff may amend within twenty days after date.

2. The motions of the same defendants to strike and for a more definite statement are denied.

3. The motion of Bulova Watch Co. to quash service of summons is denied. Said defendant may have twenty days to answer any amended Complaint to be filed.

#### Comment

(A) The contract from which the action stems, was made in California by the advertising representative of the plaintiff, evidently a resident of California, and the defendant Cowan, also a resident. It is, therefore, a California contract. The action being based on diversity of citizenship, is governed by California law and policy. [36] See, *Angel v. Bullington*, 1947, 330 U. S. 183.

It is the law of California, dating to *Boyson v. Thorn*, 1893, 98 C. 578, that bad faith cannot turn the exercise of a legal right into an actionable wrong. *Scudder Food Products v. Ginsberg*, 1943, 21 C(2) 596, 601; *Monahan v. Dept. of Water & Power*, 1941, 48 C(2) 746, 755. Under certain circumstances, however, inducing breach of a contractual relation may be actionable. *Katz v. Kapper*, 1935, 7 C. A. (2) 1; *Imperial Ice Co. v. Rossier*, 1941, 18 C(2) 33.

The contract between the plaintiff and Cowan, through the plaintiff's advertising agent, called merely for construction of advertising signs and displays. If they were used in the "final version" of a certain motion picture, the cost would be borne by the plaintiff. If not "actually included in the picture," or the picture was not released prior to

January 1, 1950, the cost would be borne by Cowan.

(The only penalty for not using the display is liability for price.)

But this is not what the Complaint seeks to recover. And, granting that the new rules establish notice pleading, there still must be stated facts which show legal liability. I find none in the Complaint.

(Cowan was free to do what he pleased with the property if he paid for it.) Its use under another name is not the libel of goods or business recognized by law. See, Yankwich, *Essays in the Law of Libel*, 1929, p. 64; 33 Am. Jur. Sec. 70.

(B) Bulova is clearly doing business in California. *West Publishing Co. v. Superior Court*, 1942, 20 C(2) 720; *International Shoe Co. v. Washington*, 1945, 326 U. S. [37] 310, 318; *Nippert v. Richmond*, 1946, 327 U. S. 416, 422. And the person served comes within the statutory designation. Cal. Code of Civil Procedure, Sec. 411; Cal. Civil Code, Sec. 406a.

Hence the rulings above made.

Dated this 7th day of October, 1949.

/s/ LEON R. YANKWICH,  
Judge.

[Endorsed]: Filed Oct. 7, 1949. [38]

In the United States District Court, Southern  
District of California, Central Division

No. 9919-Y

THE GRUEN WATCH COMPANY, an Ohio Cor-  
poration,

Plaintiff,

vs.

ARTISTS ALLIANCE, INC., a California Corpo-  
ration, LESTER COWAN PRODUCTIONS,  
LESTER COWAN, etc., BULOVA WATCH  
COMPANY, INC., etc., et al.,

Defendants.

### DECISION ON MOTIONS

The various motions of the defendants, heretofore submitted, are now decided as follows:

(1) The motion of the defendants Artists Alliance, Inc., Lester Cowan, and Lester Cowan, doing business as Lester Cowan Productions, to dismiss the second amended and supplemental complaint as to them, is hereby granted.

(2) The motion of the same defendants to strike certain portions from the second amended and supplemental complaint is granted.

(3) The motion of the defendant Bulova Watch Company, Inc., to dismiss the complaint as to them is granted.

Formal order dismissing said complaint to follow.

Costs to the defendants. [39]

I.

Introductory Statement of Facts

Action by the plaintiff to recover general damages in the sum of \$100,000.00 and punitive damages in an equal sum and injunction. The defendants have moved to dismiss and to strike portions of the amended and supplemental complaint.

The basis for asserted liability against the defendant Cowan is that, contrary to the agreement, to be referred to hereinafter, they appropriated an advertising display made by the plaintiff to be used in a motion picture to be made by Cowan, and placed the name of Bulova on it and used it in the picture with the Bulova name. The amended complaint avers that, in anticipation of use of the plaintiff's name, Cowan released advertising material indicating such use.

Bulova is charged with inducing Cowan to disregard its obligations under the agreement and to replace their name by its name and use the plaintiff's property for their benefit, without authorization and in violation of its undertaking.

By such action the plaintiff (1) lost valuable advertising which it would have received from the use of its name, (2) was and will be subjected to ridicule by the trade through use of its display under the Bulova name and (3) was injured by the mutilation of the design. [40]

## Comment

Try as I might, I cannot see any foundation of liability in the second amended and supplemental complaint. By postulating ambiguity in the contract of June 22, 1948, and by supplying additional facts both anterior and posterior to its execution, plaintiffs think that they have overcome the deficiencies of the amended complaint dismissed on October 7, 1949. In this I think they are mistaken.

The essential part of the memorandum agreement, dated June 22, 1948, is contained in Paragraphs 3 and 4 of the same, which read:

“You understand that some expense will be incurred by me or my principals in preparing for your use the above specified advertisements or displays. On behalf of my respective principals I am privileged to state that the cost of constructing such signs and displays which will be borne by my respective principals provided that their respective advertising signs and displays are included in the final version of your picture as released to the general public; and further provided that such picture is actually released to the general public not later than January 1, 1950.

“It is therefore understood and agreed that you will bear the cost incurred in connection with the construction and erection of any or all of such signs or displays which are not actually included in the picture substantially in the manner presently represented to you; it being further understood that you will bear the cost of all of such signs and displays if the said [41] picture is not released

to the general public prior to January 1, 1950. At your request, of course, we shall furnish you with an itemized statement of all costs so incurred."

These clauses mean that, in view of the fact that certain advertising signs required special outlays of moneys in their construction, Kline's principals—the plaintiff among them—will bear the cost of construction, provided they are included in the "final version" of the picture. If not, the only penalty is that the defendants would "bear the cost incurred in connection with the construction and erection" of the "signs and displays." By these undertakings, the parties have laid down the conditions of liability. And no atomizing of the phraseology or expository of references to "intentions," "undertakings" or "agreements" can destroy the binding finality of the simple, unequivocal obligation contained in these two paragraphs.

The circumstances under which courts will allow prior negotiations to be gone into in explanation of the terms of an agreement or permit subsequent conduct to become a criterion of contemporaneous interpretation are well known. While sitting on the Court of Appeals recently, I had occasion to write for the Court an opinion which states rather elaborately the law of California on this subject. (*Pacific Portland Cement Co. v. Food Machinery and Chemical Corporation*, No. 12054, filed on December 2, 1949, publication of which in the Official Reports—Federal (2)—should reach counsel almost simultaneously with this memorandum. (And see, *Barham v. Barham*, 1949, 33 C(2) 416.)

Absent any ambiguity, the argument derived by analogy from the law of options and by which it is sought to construe certain acts of the defendants as an irrevocable exercise of choice, lose all significance. In an option, [42] a binding contract arises when the optionee exercises the right under the option. Until such time, the contract is open and because of the unilateral character of the contract, courts are very strict in holding the optionee to the binding effect of any acts on his part which amount to the exercise of his rights. Once he has done so, they do not allow him to change his position to the detriment of the optionor. (See, *Bard v. Kent*, 1942, 19 C(2) 448; *Spaulding v. Yovino-Young*, 1947, 30 C(2) 138; *Warner Bros. Pictures, Inc. v. Brodel*, 1948, 31 C(2) 766, 772-773; *MacDonald v. Rosenfeld*, 1948, 83 C.A. (2) 221, 237; *Baker v. Kale*, 1947, 83 C.A. (2) 89, 92-93), and, if necessary, the courts will, in applying these principles, invoke the doctrine of estoppel. But, even in option cases, the acts on the part of the optionee must be such that the court can see in them evidence "of the continuance of such mutuality of obligation." (*Spaulding v. Yovino-Young*, *supra*, p. 142.) Otherwise, there is no legal basis for carrying over the option agreement into a different relationship than that envisaged by the contract. Strictly speaking, we are not confronted here with an option—i.e., with a contract which gave the optionee "a right against the optionor for performance of the contract to which the option relates upon the exercise of the option." (*Warner Bros. Pictures v. Brodel*,



supra, p. 773.) The undertaking on the part of the representative of the plaintiff was that they would construct certain advertising displays or lay-outs—to use the newspaper phrase—and that, if Cowan incorporated them in their “final” picture, the cost would be borne by the advertiser. If not, the cost was to be borne by Cowan. The first line in Paragraph 3 recites that expenses are to be incurred “in preparing for your use,” the advertisements and displays. So it seems to me that the inescapable conclusion is that stated in the [43] prior memorandum which summed up the agreement in the two sentences: “The only penalty for not using the display is liability for price. \* \* \* Cowan was free to do what he pleased with the property if he paid for it.”

Granted that if the parties themselves have not provided the penalty for failure to use the advertising displays in the form in which they were, i.e., with the name of the plaintiff on it, the plaintiff might seek damages upon one of the several theories propounded by them in defense of the present complaint, the obvious answer is that the parties made different provision. And the plaintiffs, after having entered into a contract which recites that, because certain advertising set-ups required the expenditures of money, if they were used in a manner beneficial to the plaintiff, Cowan would not have to pay for them, but if they were not, he is not free to insist now that he is entitled, on some general principles, to sue for defamation of goods, or injury to prospective goodwill, which might have resulted

had the advertising set-up been used with his name on it, and the like. The letters written subsequent to the execution of the contract did not alter the situation. Cowan had complete freedom of action, as between the two methods of benefitting from the contract, up to and including the actual incorporation and use of the set-up in the "final version" of the picture. Only the earnestness of counsel and their insistence that the additional facts of the second amended and supplemental complaint overcome the deficiencies of the amended complaint have led me to elaborate on the matter. I am of the view now—as I was at the time the prior decision was made—despite the leave to amend then granted—that the contract under consideration cannot be made the foundation of any liability [44] of the type which plaintiff seeks to establish. For this reason, the additional allegations add no issuable facts and the present complaint, stripped of these additional allegations, which seek to change the tenor of the agreement, does not and cannot be made to state a claim against the defendants Cowan.

What has just been said applies also to Bulova's motion to dismiss. At the present time, the law in California permits an action against a third party for wilful interference with a contractual relation. (See, Restatement: Torts, Sec. 768(2); *Katz v. Kapper*, 1935, 7 C.A.(2) 1; *Imperial Ice Co. v. Rossier*, 1941, 18 C (2) 33; *Baker v. Kale*, supra, p. 92-93; *Romano v. Wilbur Ellis & Co.*, 1947, 82 C.A. (2) 670.) But the essential condition of liability is the inducement of a breach of contract.

Under the contract, as I interpret it, Cowan, when he determined not to use the advertising layout in the form proposed, i.e., with the name of the plaintiff on it, incurred only one liability, to pay for it. He would have incurred the same liability if, after including in it the final version of the picture, it had not been released prior to January 1, 1950.

So, here again, the only consequence of the non-user being stipulated in the contract, and being the cost of the layout, assuming that Bulova induced Cowan not to use the layout with the name of the plaintiff on it—we cannot fasten liability on Bulova on a theory of tortious interfering with a contractual relation. For, if, as we hold, the agreement called for the construction of these layouts for Cowan's use, their non-use with the plaintiff's name on it called, as the only penalty, liability for its cost—a different liability cannot be thrust upon either Cowan or Bulova because Cowan, having paid for the layout, was, as stated in the prior memorandum, "free to do what he pleased with it." And if Bulova induced him to do what [45] was his legal right to do, no liability as to it can flow from the act. (See, *Sweeley v. Gordon*, 1941, 47 C.A.(2) 385; *Lynch v. Rheinschild*, 1948, 86 C.A.(2) 672, 676; *Orloff v. Metropolitan Trust Co.*, 1941, 17 C(2) 484, 488-489.)

Hence the rulings above made.

Dated this 27th day of February, 1950.

/s/ LEON R. YANKWICH,  
Judge.

[Endorsed]: Filed Oct. 7, 1949. [46]

At a stated term, to wit: The February Term, A.D. 1950, of the United States District Court within and for the Central Division of the Southern District of California, held at the Court Room thereof, in the City of Los Angeles on Monday, the 27th day of February, in the year of our Lord, one thousand nine hundred and fifty.

Present: The Honorable Leon R. Yankwich,  
District Judge.

[Title of Cause.]

#### MINUTE ORDER TO DISMISS

Court signs decision on motions heretofore submitted as follows: (1) motion of defendants Artists Alliance, Inc., and Lester Cowan, etc., to dismiss the second amended and supplemental complaint is granted; (2) motion of said defendants to strike portions of said complaint is granted; and (3) motion of defendant Bulova Watch Co., Inc., to dismiss said complaint is granted. [47]

In the District Court of the United States for the Southern District of California, Central Division.

No. 9919-Y—Civil

THE GRUEN WATCH COMPANY, an Ohio Corporation,

Plaintiff,

vs.

ARTISTS ALLIANCE, INC., a California Corporation, et al.,

Defendants.

### ORDER OF DISMISSAL

The above action having come on regularly to be heard on February 20, 1950, upon the motions of defendants Artists Alliance, Inc., a California corporation, Lester Cowan Productions, Lester Cowan, individually, Lester Cowan, d/b/a Lester Cowan Productions and Bulova Watch Company, Inc., to dismiss said action, and the matter having been submitted to the Court for decision, the Court, being fully advised in the premises, does hereby hold that said motions should be granted upon the ground and for the reason that the second amended and supplemental complaint herein fails to state a claim upon which relief can be granted.

Wherefore, it is ordered, adjudged and decreed

that said action be and the same hereby is dismissed, defendants to have their costs.

Dated: March 6, 1950.

/s/ LEON R. YANKWICH,  
Judge, District Court. [48]

Approved as to form:

TAFT, STETTINIUS &  
HOLLISTER,

GIBSON, DUNN &  
CRUTCHER,

HENRY F. PRINCE,

FREDERIC H. STURDY,

RICHARD E. DAVIS,

By /s/ FREDERIC H. STURDY,

Attorneys for Plaintiff,  
The Gruen Watch Company.

[Endorsed]: Filed March 6, 1950.

Judgment entered March 8, 1950. [49]

United States District Court, Southern District of  
California, Central Division.

NOTICE BY CLERK OF ENTRY OF  
JUDGMENT

Mitchell, Silberberg & Knupp, Esqs.,  
603 Roosevelt Bldg.,  
Los Angeles 14, Calif.

Gibson, Dunn & Crutcher, Esq.,

Henry F. Prince, Esq.,

Frederic H. Sturdy, Esq.,

Richard E. Davis, Esq.,

Taft, Stettinius & Hollister, Esqs.,

634 South Spring St.,

Los Angeles 14, Calif.

Re: The Gruen Watch Co. v. Artists Alliance,  
Inc., et al, No. 9919-Y.

You are hereby notified that Order of Dismissal  
has been entered this day in the above-entitled case,  
in Judgment Book No. 64, page 273.

Dated: Los Angeles, California, March 8, 1950.

EDMUND L. SMITH,  
Clerk.

By /s/ C. A. SIMMONS,  
Deputy Clerk. [50]

[Title of District Court and Cause.]

### NOTICE OF APPEAL

To the Clerk of the above-entitled Court:

Notice Is Hereby Given that the plaintiff in the above-entitled action hereby appeals to the United States Court of Appeals for the Ninth Circuit from that certain Order of Dismissal, dated March 6, 1950, and entered on or about March 8, 1950, granting the respective motions of defendants Artists Alliance, Inc., Lester Cowan Productions, Lester Cowan, individually, Lester Cowan dba Lester Cowan Productions, and the Bulova Watch Company, Inc., to dismiss said action, and dismissing said action on the ground [51] that plaintiff's Second Amended and Supplemental Complaint fails to state a claim upon which relief can be granted, and from each and every part of said Order, and from each and every ruling of the Court with respect to said Second Amended and Supplemental Complaint.

Dated: April 3rd, 1950.

TAFT, STETTINIUS &  
HOLLISTER,

GIBSON, DUNN &  
CRUTCHER,

HENRY F. PRINCE,

FREDERIC H. STURDY,



RICHARD E. DAVIS,

By /s/ FREDERIC H. STURDY,  
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed April 3, 1950. [52]

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[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL  
AND STATEMENT OF POINTS

To the Clerk of the above-entitled Court:

To the defendants Artists Alliance, Inc., a California corporation, Lester Cowan Productions, Lester Cowan, individually, and Lester Cowan, dba Lester Cowan Productions, and to their attorneys: Messrs. Mitchell, Silberberg & Knupp and Leonard A. Kauffman, Esq., and

To the defendant, Bulova Watch Company, Inc., a New York corporation doing business in California, and to its attorneys: Messrs. Low and Stone and Leonard Low, Esq.: [54]

Designation of Record on Appeal

Plaintiff hereby designates as those portions of the record and proceedings to be included in the record on appeal the following:

1. Second Amended and Supplemental Complaint for Injunction, Damages and Exemplary

Damages, including the exhibits attached thereto.

2. Notice of Motions of Defendants Artists Alliance, Inc., Lester Cowan and Lester Cowan, dba Lester Cowan Productions, to dismiss and to strike from Second Amended and Supplemental Complaint (not including, however, the Memorandum of Points and Authorities appended thereto.)

3. Notice of Motion of Defendant Bulova Watch Company, Inc., to dismiss Second Amended and Supplemental Complaint (not including, however, the Memorandum of Points and Authorities appended thereto.)

4. Decision on Motions, dated February 27, 1950, including the Comment appended thereto.

5. Minute Order dated February 27, 1950, re Decision on Motions.

6. Order of Dismissal dated March 6, 1950.

7. Notice by Clerk of Entry of Order of Dismissal dated March 8, 1950.

8. Notice of Appeal dated April 3, 1950, including date of filing.

9. This Designation of Record on Appeal and Statement of Points. [55]

## STATEMENT OF POINTS

### I.

The trial court erred in granting the motion of defendants Artists Alliance, Inc., a California cor-

poration, Lester Cowan Productions, Lester Cowan, individually, and Lester Cowan, dba Lester Cowan Productions, to dismiss the Second Amended and Supplemental Complaint for Injunction, Damages and Exemplary Damages, for the reason that the said Complaint states a claim upon which all or some of the relief sought by said Complaint can be granted against said defendants.

## II.

The trial court erred in granting the motion of defendant Bulova Watch Company, Inc., to dismiss the Second Amended and Supplemental Complaint for Injunction, Damages and Exemplary Damages, for the reason that the said Complaint states a claim upon which all or some of the relief sought by said Complaint can be granted against said defendant.

## III.

The trial court erred in granting the several motions of defendants Artists Alliance, Inc., Lester Cowan Productions, Lester Cowan, individually, and Lester Cowan, dba Lester Cowan Productions, to strike the following several portions of the Second Amended and Supplemental Complaint for Injunction, Damages and Exemplary Damages, for the reason that each of said portions of said Complaint, respectively, was and is material:

(a) That portion of Paragraph II (page 3, lines 4-14) reading as follows:

“On or about said date, the defendants Cowan advised the said Kline of the said de-

defendants' plans and intentions to make a feature length motion picture in which the Marx Brothers would be co-starred, and further advised the said Kline that certain scenes and sequences in the motion picture would be devoted to the activities of one or more of the said Marx Brothers in connection with various advertising displays. [56]

“On or about the same date said defendants Cowan requested the said Kline to obtain from any non-competing advertisers represented by him, agreements in connection with the said defendants' use of signs and displays advertising the products of said non-competing advertisers.”

(b) That portion of Paragraph II (page 3, lines 15-22) reading as follows:

“Plaintiff is informed and believes and therefore alleges that at said time the script of said motion picture did not contain a clock sequence or stunt but that the said Kline prior to the signing of the memorandum of agreement, hereinafter referred to in Paragraph IV, conceived the clock sequence or stunt which was ultimately used by defendants Cowan, and also suggested the idea of a clock of his client Gruen being used in connection therewith.”

(c) All of Paragraph III (pages 3 and 4) reading as follows:

“Thereafter at said special instance and re-

quest of said defendants Cowan, the said Kline obtained from plaintiff an agreement for defendants Cowan to use in said motion picture a sign and display advertising plaintiff's products, upon the condition and understanding that the shots of plaintiff's said special sign and display would be used and displayed in said motion picture. Said Kline thereupon advised defendants Cowan of his receipt from plaintiff of said agreement, and said defendants thereupon agreed with plaintiff that in consideration of plaintiff's authority and [57] permission to use plaintiff's said contemplated special sign and display in said motion picture and in consideration of plaintiff's constructing and paying the cost of said sign and display, said defendants would use said sign and display in said motion picture."

(d) All of Paragraph IV (page 4) reading as follows:

"Concurrently with the agreement referred to in Paragraph III, and in recognition of the fact that due to circumstances beyond the control of defendants Cowan it might be necessary to cut the scene containing plaintiff's display from said picture, it was understood and agreed between plaintiff and the defendants Cowan that in such event defendants Cowan would bear the cost of said sign and display. At the same time it was understood and agreed between plaintiff and the defendants Cowan that

defendants Cowan would bear the cost of said sign and display if said motion picture was not released to the general public prior to January 1, 1950.”

(e) That portion of Paragraph V (page 4, lines 21-28) reading as follows:

“\* \* \* The ‘agreement’ referred to in Paragraph 2 of said memorandum dated June 22, 1948, was and is the agreement set out in Paragraph III hereof. That portion of Paragraph 4 of said memorandum which provided that defendants Cowan would pay plaintiff for the sign or display in the event said sign or display was ‘not actually included in the picture,’ was intended to and did express the parties’ additional concurrent understanding and agreement set out in Paragraph IV hereof.”

(f) That portion of Paragraph VII (page 5, lines 22-26) reading as follows:

“In addition to the actual cost of construction, plaintiff expended a substantial amount of time, thought and effort in the conception and design and display, and said special sign and display was actually conceived by, was the original idea of the plaintiff, \* \* \*”

(g) All of Paragraph VIII (page 6) reading as follows:

“After the defendants Cowan had used plain-

tiff's said special sign and display in the production of said motion picture, the said defendants Cowan encouraged and permitted Life Magazine, a nation-wide weekly publication, and one Slim Aarons, a professional photographer employed by said Life Magazine, to take photographs of said sign and display and provided Aarons and Life Magazine with other photographs of said sign and display which were actually taken from the motion picture film. Concurrently therewith defendants Cowan advised plaintiff of their plan and desire to obtain publicity for their said motion picture from Life Magazine and plaintiff, acting solely upon the understanding and belief that said defendants had finally determined that plaintiff's display was satisfactory and was in and would remain in said motion picture, authorized and permitted the said defendants to release said photographs for publication. Defendants Cowan thereupon, and with full knowledge of plaintiff's said understanding [59] and belief, released all of said photographs for publication, all for the sole purpose of publicizing and promoting said defendants' motion picture 'Love Happy.' "

(h) All of Paragraph IX (page 7) reading as follows:

"Thereafter and under date of September 10, 1948, defendants Cowan wrote plaintiff a letter and enclosed therewith the photographs

referred to therein. A full, true and correct photostatic copy of said letter is attached hereto, marked Exhibit 'B,' and is hereby referred to and made a part hereof as though here set forth at length."

(i) That portion of Paragraph X (page 7, lines 9-14) reading as follows:

"Thereafter and under date of October 4, 1948, defendants Cowan wrote plaintiff an additional letter and enclosed therewith the additional photographs referred to therein. A full, true and correct photostatic copy of said letter is attached hereto, marked Exhibit 'C,' and is hereby referred to and made a part hereof as though here set forth at length."

(j) That portion of Paragraph X (page 7, lines 14-28) reading as follows:

"In reliance upon the prior agreements, representations and actions of defendants Cowan, plaintiff released said photographs for publication in jewelers' trade papers and said photographs were actually published therein, and likewise in reliance upon said agreements, representations and actions of defendants Cowan, plaintiff advised its dealers throughout the United States that Gruen would be advertised in said defendants' motion picture. Said release to the jewelers' trade papers and said advice to plaintiff's dealers throughout the United States gave valuable publicity to the



said defendants and their motion picture. Plaintiff would not have made said releases to jewelers' trade papers nor given said advice to its dealers except for its understanding and belief theretofore induced by the agreements, representations and actions of defendants Cowan that its special advertising sign and display was and would be in the said motion picture."

(k) All of Paragraph XI (pages 7-8) reading as follows:

"Thereafter, and with the knowledge and permission of defendants Cowan, Life Magazine published in its issue dated February 7, 1949, a four-page article including nine (9) photographs or shots stated as being from 'The Marx Brothers forthcoming motion picture "Love Happy."' Said article likewise made certain other statements and representations to the general public, all as is more particularly set forth in said article and in the captions of the said photographs. A copy of the table of contents page, and of said news article and the photographs therein contained, is attached hereto, marked Exhibit 'D,' and is hereby referred to and made a part hereof as though here set forth at length. [61] Plaintiff is informed and believes and therefore alleges that prior to said publication, the defendants Cowan knew or had good reason to know that

they would not use the name of Gruen in their said motion picture, but they failed to advise either Life Magazine or the plaintiff of said fact.”

(1) All of Paragraph XII (page 8) reading as follows:

“By their acts of authorizing and permitting the release of the said Life Magazine article and the two said photographs which depicted the Gruen name and display, defendants Cowan represented to the public and to plaintiff that said Gruen name and display would be in said forthcoming motion picture, which said defendants Cowan had previously represented to plaintiff (by their letter dated October 4, 1948) would have its world premiere on February 12, 1949, only five days after said Life Magazine publication on February 7, 1949, and by their said acts the said defendants represented to the public and to plaintiff that the photographs reproduced in said Life Magazine article constituted a portion of the final version of the motion picture ‘Love Happy’ and that said photographs would be contained in said motion picture when it was released to the general public.”

(m) That portion of Paragraph XIII (pages 8-9, lines 29-9) reading as follows:

“After the completion of said motion picture, and after said release of said Life Maga-

zine [62] article and photographs under date of February 7, 1949, and after plaintiff had released said publicity for the said motion picture to jewelers' trade papers and to plaintiff's dealers, defendants Cowan demanded that plaintiff pay them the sum of at least Twenty-five Thousand Dollars (\$25,000.00) cash, allegedly to be used by said defendants for the purpose of jointly advertising said defendants' motion picture and plaintiff's products in national advertising, and defendants Cowan advised plaintiff that unless plaintiff complied with said demand said defendants Cowan would not only remove from the motion picture any and all shots of the display provided by plaintiff but in addition would substitute in their place shots advertising the products of one of plaintiff's major competitors in the watch industry."

(n) That portion of Paragraph XIII (page 9, lines 9-14) reading as follows:

"Said removal and substitution were threatened, and thereafter carried out, by defendants Cowan arbitrarily, wilfully, maliciously, in bad faith and for the purpose of exacting an additional financial contribution from plaintiff over and above that called for by the agreements of the parties, and for the purpose of injuring the business and good will of plaintiff."

(o) That portion of Paragraph XIII (page 9, lines 14-19) reading as follows: [63]

“Plaintiff refused to comply with said demand. Plaintiff is informed and believes and therefore alleges that while defendants Cowan were making said threats and demands upon plaintiff, they and defendants Bulova were already, but without the knowledge of plaintiff, negotiating to substitute Bulova’s name in said motion picture in place of plaintiff’s name.”

(p) That portion of Paragraph XVI (page 10, line 22) reading as follows:

“Despite the lack of authority of defendants Cowan, \* \* \*”

(q) That portion of Paragraph XX (page 13, lines 5-6) reading as follows:

“\* \* \* and has lost and is losing the value of the unique stunt and special sign and display conceived by plaintiff, \* \* \*”

(r) That portion of Paragraph XX (page 13, lines 6-9) reading as follows:

“\* \* \* and plaintiff and plaintiff’s business, competitive position, dealer relationships, reputation and good will have likewise heretofore been and are being substantially damaged.”

(s) All of Paragraph XXI (page 13) reading as follows:

“All of the aforesaid actions of defendants and of each of them were wilful, malicious and

oppressive and by virtue of such wilfulness, malice and oppression plaintiff is entitled to recover damages [64] for the sake of example and by the way of punishing the defendants and each of them in the additional sum of One Hundred Thousand Dollars (\$100,000.00).”

Dated: April 3rd, 1950.

TAFT, STETTINIUS &  
HOLLISTER,

GIBSON, DUNN &  
CRUTCHER,

HENRY F. PRINCE,

FREDERIC H. STURDY,

RICHARD E. DAVIS,

By /s/ FREDERIC H. STURDY,  
Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed April 4, 1950. [65]

DESIGNATION OF ADDITIONAL CONTENTS  
OF RECORD ON APPEAL OF DEFEND-  
ANT-APPELLEES, ARTISTS ALLIANCE,  
INC., ET AL.

To the Clerk of the Above-Entitled Court:

Defendant-appellees, Artists Alliance, Inc., a California corporation, Lester Cowan Productions, Lester Cowan, individually and Lester Cowan d/b/a Lester Cowan Productions, designate, to be contained in the record on appeal, in addition to the contents designated by plaintiff-appellant, Order on Motions dated October 7, 1949, including the Comment appended thereto.

Dated: April 13, 1950.

MITCHELL, SILBERBERG &  
KNUPP and

LEONARD A. KAUFMAN,

By /s/ LEONARD A. KAUFMAN,

Attorneys for Defendant-Appellees, Artists Alliance, Inc., Lester Cowan Productions, Lester Cowan, Individually and Lester Cowan, d/b/a Lester Cowan Productions.

Affidavit of Service by Mail attached.

[Endorsed]: Filed April 13, 1950. [67]

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 68, inclusive, contain the original Second Amended and Supplemental Complaint for Injunction, Damages and Exemplary Damages; Notice of Motions to Dismiss and to Strike from Second Amended and Supplemental Complaint less Memorandum of Points and Authorities attached; Notice of Motion to Dismiss Second Amended and Supplemental Complaint less Memorandum of Points and Authorities attached; Order on Motions filed October 7, 1949; Decision on Motions filed February 27, 1950; Order of Dismissal; Notice of Entry of Judgment; Notice of Appeal; Designation of Record on Appeal and Statement of Points and Designation of Additional Portions of Record on Appeal and a full, true and correct copy of minute order entered February 27, 1950, which constitute the record on appeal to the United States Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing and certifying the foregoing record amount to \$2.00 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 24th day of April, A.D. 1950.

EDMUND L. SMITH,

Clerk.

[Seal] By /s/ THEODORE HOCKE,  
Chief Deputy.

[Endorsed]: No. 12528. United States Court of Appeals for the Ninth Circuit. The Gruen Watch Company, Appellant, vs. Artists Alliance, Inc., Lester Cowan Productions, Lester Cowan, individually, Lester Cowan, doing business as Lester Cowan Productions and Bulova Watch Company, Inc., Appellee. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed April 26, 1950.

/s/ PAUL P. O'BRIEN,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.



In the United States Court of Appeals  
for the Ninth Circuit

THE GRUEN WATCH COMPANY, an Ohio Corporation,

Plaintiff-Appellant,

vs.

ARTISTS ALLIANCE, INC., a California Corporation,  
LESTER COWAN, Individually LESTER COWAN,  
dba Lester Cowan Productions,  
BULOVA WATCH COMPANY, INC., a New York Corporation,  
Doing Business in California, DOE I, DOE II, DOE III,  
DOE IV, DOE V and DOE VI,

Defendants-Appellees.

STATEMENT OF POINTS RELIED ON AND  
DESIGNATION OF MATERIAL PORTIONS OF RECORD ON APPEAL TO BE  
PRINTED.

To the Clerk of the above-entitled Court:

To the defendants Artists Alliance, Inc., a California corporation, Lester Cowan Productions, Lester Cowan, individually and Lester Cowan, dba Lester Cowan Productions, and to their attorneys: Messrs. Mitchell, Silberberg & Knupp and Leonard A. Kauffman, Esq., and

To the defendant, Bulova Watch Company, Inc., a New York corporation doing business in California, and to its attorneys: Messrs. Low and Stone and Leonard Low, Esq.:

Appellant hereby refers to and adopts in all respects as its Statement of Points on which it intends to rely on appeal and as its Designation of Record which it considers material to the consideration of the appeal, the "Designation of Record on Appeal and Statement of Points" dated April 3, 1950, and heretofore filed by plaintiff-appellant in the District Court on or about April 4, 1950, and requests the printing of the entire record, excepting and omitting therefrom only the "Order on Motions" filed the 7th day of October, 1949, (said Order being at pages 36, 37 and 38 of the original certified record), together with this Statement of Points Relied on and Designation of Material Portions of Record on Appeal to be Printed.

Dated: April 22, 1950.

TAFT, STETTINIUS &  
HOLLISTER,

GIBSON, DUNN &  
CRUTCHER,

HENRY F. PRINCE,

FREDERIC H. STURDY,

RICHARD E. DAVIS,

By /s/ FREDERIC H. STURDY,  
Attorneys for Plaintiff-  
Appellant.

Receipt of copy acknowledged.

[Endorsed]: Filed April 26, 1950.

[Title of Court of Appeals and Cause.]

DEFENDANTS-APPELLEES' DESIGNATION  
OF ADDITIONAL MATERIAL PORTIONS  
OF RECORD ON APPEAL TO BE  
PRINTED.

To the Clerk of the above-entitled Court:

Defendants-Appellees, Artists Alliance, Inc., a California corporation, Lester Cowan Productions, Lester Cowan, individually; Lester Cowan, dba Lester Cowan Productions, designate as material to the consideration of this appeal, in addition to the contents designated by plaintiff-appellant, Order on Motions, dated October 7, 1949, including the comment appended thereto.

Dated: May 2, 1950.

MITCHELL, SILBERBERG &  
KNUPP and

LEONARD A. KAUFMAN,

By /s/ LEONARD A. KAUFMAN,

Attorneys for Defendants-Appellees Artists Alliance, Inc., a California Corporation, Lester Cowan Productions, Lester Cowan, Individually, and Lester Cowan, dba Lester Cowan Productions.

Affidavit of Service by Mail attached.

[Endorsed]: Filed May 3, 1950.

